

ORIGINAL

Decision No. 9034

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Albers Bros. Milling Company.)
 a corporation.)
 Complainant.)
 vs)
 Southern Pacific Company.)
 a corporation.)
 Defendant.)

CASE NO. 1463.

Sullivan, Sullivan and Theodore J. Roche, by
 George D. Squires, for Complainant,
 C. W. Durbrow, for Southern Pacific Company,
 G. H. Baker, for Atchison, Topeka & Santa Fe Rail-
 way Company,
 Mr. Van Dyne, for Oakland Chamber of Commerce,
 F. K. Clifford, for Sperry Flour Company.

LOVELAND, COMMISSIONER:

O P I N I O N

The complainant is a corporation, organized under the laws of the State of Oregon, and is a manufacturer and dealer in grain, grain products, flour, cereals and cereal products, with offices in the city of San Francisco and a mill at tide water, Oakland, adjacent to Oakland Wharf, located on the rails of the Southern Pacific Company.

The allegations in the complaint are that the grain rates to and from the mill at Oakland should be just, reasonable and nondiscriminatory as compared with rates on the same commodities

to and from South Vallejo, where are located competing mills. The rates in effect at the time this proceeding was commenced averaged from one-half to five cents per 100 pounds, or from 10 cents to \$1.00 per ton greater than rates for equi-distant hauls on the same commodities contemporaneously in effect to and from South Vallejo. Reparation is asked for.

The charge of the unreasonableness of the rates per se, although included in the complaint, received but little attention. The real cause of the complaint is the alleged discrimination against Oakland as compared with the rates in effect at South Vallejo.

There was filed with this proceeding by the same complainant Case No. 1471, alleging that the milling-in-transit rules, charges and regulations of the Southern Pacific, Atchison, Topeka & Santa Fe and Northwestern Pacific were discriminatory and, therefore, unlawful.

Believing that a State-wide situation was presented in connection with the milling-in-transit privileges, this Commission instituted on its own motion Case No. 1526, calling into question all of the practices of the defendant carriers involving milling-in-transit charges. By stipulation, the testimony and exhibits presented in any one of the three proceedings were to be considered, when relevant, in connection with this proceeding, No. 1463.

The complainant filed forty exhibits and, through its witnesses, made an analysis of each of the exhibits, dealing not only with the alleged unreasonable and discriminatory rates on the grain moving into Oakland, but also with the milling-in-transit privileges. This latter subject, however, will be dealt with in the opinion and order to issue in Cases Nos. 1471 and 1526.

The testimony showed that in the work-out of the grain rates South Vallejo is given practically the same adjustment as Port Costa on tonnage moving from competitive river and bay points served by the water carriers. Large quantities of grain are brought to South Vallejo via river and bay boats, and it was because of this competition that the Southern Pacific Company found it necessary, many years before complainant's mill was erected at Oakland, to extend to South Vallejo the rates in effect on the opposite side of the bay at Port Costa. This was done, notwithstanding the fact that movement of the tonnage from Port Costa to South Vallejo involved difficult and expensive transportation operations and a haul of $37\frac{1}{2}$ miles, as compared with a haul of but 26.2 miles Port Costa to Oakland. The rates to Oakland are approximately $2\frac{1}{2}$ cents per 100 pounds higher than to Port Costa, occasioned by the increased mileage, while no additional charge is made in handling the same class of tonnage to South Vallejo for delivery to the competing mill located at that point. This is one of the alleged discriminatory practices of the Southern Pacific Company. The testimony, however, showed that the rate adjustment complained of had extended over a period of from 35 to 40 years and represented a forced schedule of rates by reason of the intense competition between the water and rail carriers in effect when regulation was not enforced. At that time the rail carriers found it absolutely necessary to either make the same rates to South Vallejo as in effect at Port Costa or lose to a great extent the vast wheat tonnage moving out of

the Delta regions.

The feature of the rate adjustment mostly complained of in this proceeding is the variation of the treatment of the rates for hauling grain moving through Port Costa to Oakland as compared with grain moving from the same points of origin through Port Costa to South Vallejo. Some of the effects of the adjustments are illustrated by the exhibits and the testimony of the witnesses.

Complainant's Exhibit No.30 shows that on grain originating at points in the Sacramento Valley, South Vallejo has the same rates as Port Costa, while the rates to Oakland are $2\frac{1}{2}$ ¢ per 100 pounds greater than the Port Costa-South Vallejo rates, the distance being 23.5 miles in favor of South Vallejo. The testimony of defendant's witnesses was to the effect that this adjustment was created by reason of the water competition via the Sacramento River and its tributaries.

The same exhibit names rates from San Joaquin Valley points and while in this situation Oakland has an advantage in distance of 22.7 miles over South Vallejo, the rates average $1\frac{1}{2}$ ¢ per 100 pounds higher to Oakland than to South Vallejo. It would seem that if mileage were the controlling factor the rate differentials from Sacramento Valley points, where the distance favors South Vallejo by 23.5 miles, would be practically the same as from San Joaquin Valley points to Oakland, where the distance favors Oakland by 22.7 miles. Defendant's witness testified that the grain rates from San Joaquin Valley points to South Vallejo were also built up on the rates originally forced by water competition, although it was admitted that within recent years there has been no movement of grain by water from the principal points of origin in the San Joaquin Valley. The same exhibit

sets forth the rates from points in the Salinas Valley, showing that while the distance to Oakland as compared to South Vallejo is 62.7 miles shorter, the rates average but one cent per hundred pounds in favor of Oakland.

Complainant's Exhibit No. 31 names rates from San Joaquin Valley points to Stockton as compared with the rates to Oakland. The average haul to Stockton is 67.2 miles shorter than to Oakland, but the rates to Oakland are $4\frac{1}{2}$ ¢ per 100 pounds higher. On the other hand, by the comparison given in Exhibit No. 30, the rates from Salinas Valley points to South Vallejo are but one cent per 100 pounds higher to South Vallejo than to Oakland, although here the distance favors Oakland by 62.7 miles.

Otherwise stated: Sacramento Valley points to Oakland, rate $2\frac{1}{2}$ ¢ higher than to South Vallejo, with the mileage 23.5 greater to Oakland.

San Joaquin Valley points to Oakland, rates $1\frac{1}{2}$ ¢ higher than to South Vallejo, with the mileage 22.7 greater to South Vallejo.

Salinas Valley points to Oakland, rates are 1¢ higher to South Vallejo, with the mileage 62.7 greater to South Vallejo.

San Joaquin Valley points to Oakland, rates $4\frac{1}{2}$ ¢ higher than to Stockton, with the mileage 67.2 greater to Oakland.

Here we have situations where the mileage differences are practically the same, but with the competing mills at South Vallejo and Stockton having more favorable rate adjustments than are in effect at Oakland.

The reasoning of the defendant is not persuasive, that because of the early day adjustments at South Vallejo and Stockton there can be no discrimination against the mills of the complainant

which were later established at Oakland. The record shows that the Port Costa grain rates were extended to include South Vallejo because grain originating in the delta regions was landed at Port Costa or South Vallejo by the boat carriers at the same rates. This made it necessary to give to South Vallejo the Port Costa rates regardless of the extra haul of 37½ miles. When the mill was established at Oakland the same water carriers served the Oakland territory at practically the same rates as they assessed at Port Costa-South Vallejo and it would appear to the Commission that this defendant should have made readjustments and given to Oakland the same advantages, due to its location, as were conceded to South Vallejo and Stockton. In the Stockton situation the adjustments were made in the first place to meet commercial conditions and water competition, and in the second by reason of the rail competition created by the Western Pacific, its main line from Sacramento to Oakland passing through Stockton. The mill at Oakland, in addition to being served by the river and bay water carriers, has rail facilities not possessed by the mill at South Vallejo, inasmuch as Oakland is reached by defendant Southern Pacific Company, by the Atchison, Topeka & Santa Fe, the Western Pacific and the San Francisco and Sacramento Railroad. Stockton has as representative a transportation situation as Oakland, being served by the water carriers, by the Southern Pacific, the Atchison Topeka & Santa Fe, the Western Pacific, Tidewater Southern Railway and California Traction.

The geographical location of these three milling centers presents a situation which naturally leans more or less toward a

grouping of the rates in order to prevent violations of the long and short haul provisions of the Constitution and, while the Commission does not urge a complete grouping of the grain rates at Oakland, South Vallejo and Stockton, it believes this phase should be given very careful consideration in dealing with this adjustment. The carrier cannot give one point an advantage over another when conditions are similar and whatever rates are assessed should be uniformly applied. I believe there should not be here a complete recognition of the length of the hauls, but that in the grade-out of these rates the adjustment should be substantially the same for equal distant service. The issues here presented must be determined in the light of the present conditions and not by those of the past years, when circumstances were materially dissimilar.

The exhibits of complainant set forth the two increases made in the rates since June 25, 1918, demonstrating that these readjustments have worked to its disadvantage by widening the differentials formerly existing as between Oakland, South Vallejo and Stockton. It also appears that arbitrariness are added to rates for branch line services with the exception of the services performed on grain between Port Costa and ^{South} Vallejo, 37.5 miles and between Suisun and South Vallejo, 20.1 miles.

I must conclude from all of the evidence before me that there is discrimination in the rates now in effect applying to Oakland as compared with those in effect to South Vallejo and Stockton.

An order cannot be entered upon this record fixing the reasonable rates, but the Southern Pacific Company will be expected

to readjust its rates, in accordance with these findings, within ninety (90) days from the service hereof. If this is not done, the matter may be brought to the Commission's attention again for further appropriate action.

Complainant's claims for reparation are based primarily upon the grounds that the rates to Oakland are discriminatory and in favor of South Vallejo. But complainant competes with mills other than those at South Vallejo and there is nothing in the record to show that the South Vallejo mills control the colling prices. There is no proof of damages, and in this silent condition of the record no basis is afforded for an award of reparation.

O R D E R

Albers Bros. Milling Company, a corporation, having filed with this Commission a complaint alleging that the rates applying to and from Oakland on grain, grain products, flour, cereals and cereal products are unjust, preferential and discriminatory, a regular hearing having been held, and basing its order on the findings of fact appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that the Southern Pacific Company publish and file with this Commission on or before ninety (90) days from the date hereof a tariff or tariffs applying on the commodities mentioned, to and from Oakland, which rates shall be

just, reasonable and non-discriminatory as compared with rates
in effect on the same commodities at South Vallejo and Stockton.

IT IS HEREBY FURTHER ORDERED that as to other matters the
complaint be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and
ordered filed as the opinion and order of the Railroad Commission
of the State of California.

Dated at San Francisco, California, this 1st day of
June, 1921.

H. A. Brundage
H. B. Cleveland
James W. Martin
H. J. Pennington
Commissioners.